



South Carolina House of Representatives

# Legislative Update

David H. Wilkins, Speaker of the House

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# HOUSE WEEK IN REVIEW

The House of Representatives concurred in Senate amendments to **H.3007**, which provides for **STATE INCOME TAX REDUCTION FOR SMALL BUSINESSES**, and enrolled the bill for ratification. The bill was subsequently ratified and signed into law by the Governor. The legislation gradually reduces the state income tax rate for small businesses by 0.5 percent a year over the course of four years beginning in 2006 so that, after 2008, such businesses are to be taxed at a rate of 5 percent.

The House passed **S.406** and enrolled the bill for ratification. This bill **REQUIRES THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES TO ADMINISTER THE SOUTH CAROLINA COMMERCIAL DRIVER'S LICENSE PROGRAM IN ACCORDANCE WITH THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS**, and makes numerous revisions of commercial driving provisions to bring these provisions into conformity with these federal regulations.

The House approved and sent to the Senate **H.3213**, which enacts the **"RIGHT TO LIFE ACT OF SOUTH CAROLINA"**. The bill provides that the right to due process and the right to equal protection vest at fertilization. The legislation does not prohibit the prescription of a morning after pill to a rape victim.

The House returned **S.49** to the Senate with amendments. This bill **REQUIRES HEALTH INSURERS TO PROVIDE COVERAGE FOR TREATMENT OF MENTAL HEALTH CONDITIONS**. The legislation's coverage requirement pertains to treatment of the following mental conditions: (1) Bipolar Disorder, (2) Major Depressive Disorder, (3) Obsessive Compulsive Disorder, (4) Paranoid and Other Psychotic Disorder, (5) Schizoaffective Disorder, (6) Schizophrenia, (7) Anxiety Disorder, (8) Post-traumatic Stress Disorder, and (9) Depression in childhood and adolescence. The legislation requires a health insurance plan to provide the insured at least one choice for treatment of mental health conditions within the plan that has rates, terms, and conditions that place no greater financial burden on the insured than for access to treatment of physical conditions in similar settings and for similar types of treatment. Any required deductible or out-of-pocket limits must be comprehensive for coverage of both mental health and physical health conditions. The bill provides that a health insurance plan is not prohibited from limiting coverage for mental health conditions to a total of forty-five days of inpatient care and sixty outpatient visits for each insured for a plan year. The legislation establishes provisions under which a health insurer may provide coverage for treatment of mental health conditions through a managed care organization even if the insurer does not otherwise provide for management of care. The legislation provides that the State Employee Insurance Program shall continue to provide mental health parity in the same manner and with the same management practices as included in the plan beginning in 2002, and is not under the jurisdiction of the Department of Insurance. Before July 1, 2008, The Department of Insurance is required to report to the General Assembly an estimate of the impact of this legislation on health insurance costs.

The House amended, approved, and sent to the Senate **H.3499**, the **STUDENTS HEALTH AND FITNESS ACT OF 2005**. This bill:

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- Decreases the current 800:1 student-teacher ratio in physical education to 500:1, phased in over three years;
- States that the goal of the Act is to provide students with the equivalent of thirty minutes of physical education instruction daily, and provides that the weekly minutes of instruction must be distributed in a developmentally appropriate manner for each grade level;
- Limits physical education classes to a student-teacher average ratio of 28:1;
- Requires and provides for public school physical education program assessments, requires the State Department of Education (SDE) to develop a method of calculating a district and school physical education program effectiveness score, and requires that this score be reported through the district and school report card;
- Requires that assessment of students in grades two, five, eight, and high school be used to assess the effectiveness of the school's physical education program and its adherence to the standards;
- Requires elementary schools to designate a physical education teacher to serve as its Physical Education Activity Director responsible for coordinating additional physical activity for students and teachers before, during, and after school;
- Requires the General Assembly, beginning with school year 2006-07, to appropriate funds to be used for providing grants for licensed nurses in elementary public schools;
- To promote optimal healthy eating patterns, requires SDE to place recommendations of the SDE Task Force on Student Nutrition and Physical Activity Report in policy to be implemented in elementary schools;
- Requires SDE to make available coordinated school health model designed to address health issues of children, and outlines eight components which the program must provide;
- Requires and provides for school districts to establish and maintain a Coordinated School Health Advisory Council (CSHAC) to assess, plan, implement, and monitor district and school health policies and programs, including development of a district wellness policy;
- Requires districts to work with the CSHAC to develop school health plans which will be a part of the district's currently-required strategic plan;
- Provides for annual professional development in health, safety, and nutrition education to K-12 teachers;
- Prohibits elementary schools from providing to students foods of minimal nutritional value but does not restrict foods which parents may provide for the child to consume at school;
- Restricts what foods may be offered in public-area vending machines in elementary schools, and requires the CSHAC to determine which snacks may be sold in these machines;
- Requires that elementary school students must have at least twenty minutes to eat lunch once they have received their food;
- Requires that students in grades K-5 receive nutrition education weekly;
- Stipulates that implementation of these provisions is contingent upon funding from the General Assembly.
- May not be construed to prohibit or limit the sale or distribution of any food or beverage item through fundraisers by students, teachers, or groups when the items are intended for sale off the school campus.

The House amended, approved, and sent to the Senate H.3543, which enacts “**MARY LYNN’S LAW**,” received a favorable with amendment report. This bill makes revisions pertaining to **VICTIM NOTIFICATION, DEFENDANT PARTICIPATION IN DIVERSIONARY PROGRAMS SUCH AS MENTAL HEALTH COURT AND DRUG COURT, RESTRAINING ORDERS, BOND HEARINGS**, and the **CRIMINAL OFFENSES OF HARASSMENT AND STALKING**. H.3543 provides that (1) a person with a current charge or a prior conviction for a violent offense or a harassment or stalking offense, or (2) a person subject to a restraining order or valid order of protection, or (3) a person currently on parole or probation for any offense, or (5) if the consent of the victim has not been obtained, then that person may not be considered for a diversion program such as drug court or mental health court. These provisions do not apply to a program administered by the South Carolina Prosecution Coordination Commission or by a circuit solicitor. H.3543 also requires diversionary programs, except a diversionary program administered by the South Carolina Prosecution Coordination Commission or a circuit solicitor, to make reasonable attempts to notify the victim of a crime prior to the defendant’s release from the program, unless the defendant is released to a law enforcement agency. Likewise, in every case where there is a court-ordered or mandatory mental evaluation, which takes place in an inpatient facility, the organization or facility responsible for the evaluation must make reasonable attempts to notify the victim of the crime prior to the defendant’s release from the facility, unless the defendant is released to a law enforcement agency. Notification of a victim may not be only by electronic or other automated communication or recording. However, after three unsuccessful attempts to reach a victim by electronic or automated communication or recording, the appropriate agency or division shall attempt to make personal contact with the victim. H.3543 requires a department or agency having custody of a person accused, convicted, or adjudicated guilty of committing a crime involving a victim, to inform each victim, upon request, before any transfer of the person to a less secure facility or to a diversionary program. These provisions do not apply to transfers to other law enforcement agencies and transfers to other non-law enforcement locations if the person remains under security supervision. All victims, upon request, must be notified of interdepartmental transfers after the transfer occurs. Notification to a victim may not be only by electronic or other automated communication or recording, except in the case of interdepartmental transfers. H.3543 requires that the written victim impact statement to be transmitted by the prosecuting agency or summary court to the Department of Corrections or Department of Probation, Parole and Pardon Services, as appropriate, no later than 10 days after sentencing. H.3543 provides that a law enforcement agency, upon effecting the arrest or detention of a person accused of committing an offense involving a victim, must also provide to a mental health facility the appropriate contact information for each victim. H.3543 creates the offenses of harassment in the first degree, harassment in the second degree, as well as redefines the offense of stalking. Penalties are outlined for violations. There are exceptions for licensed private investigators and electronic mail service providers. The bill authorizes a law enforcement officer or another person with knowledge of the circumstances to sign a warrant in place of the victim for a person alleged to have committed a harassment or stalking offense. Before sentencing a person convicted of stalking or harassment in the first or second degree, the court may require the person to undergo a mental health evaluation. The evaluation may not take place until the facility conducting the evaluation has received all of the necessary documentation. If the evaluation results in the unsupervised release of the person, the victim must be notified prior to the person’s release. All reasonable efforts must be made to notify the victim personally. H.3543 authorizes magistrate’s court to assess a filing fee against the nonprevailing party in an

action for a restraining order. The court may hold a person in contempt of court for failure to pay this filing fee. A restraining order remains in effect for a fixed period of time for not less than one year, as determined by the court on a case-by-case basis. A restraining order issued by a court must not contain the social security number of a party to the order and must contain as little identifying information as necessary of the party it seeks to protect. Current law provides that temporary restraining orders must be for a fixed period not to exceed six months; this bill increases that time frame to one year. Prior to setting bail, a magistrate or municipal judge may order a defendant charged with harassment in the first or second degree or stalking to undergo a mental health evaluation. The purpose of this evaluation is to determine if the defendant needs mental health treatment or counseling as a condition of bond. The evaluation must be scheduled within 10 days of the order's issuance. Once the evaluation is complete, the examiner must, within 48 hours, issue a report to the local solicitor's office, summary court judge, or other law enforcement agency. Upon receipt of the report, a bond hearing must be arranged before a circuit court judge or the summary court judge. **H.3543** requires at a bond hearing that the court shall have, if available, all incident reports generated as a result of the offense charged and a copy of the accused's criminal record. **H.3543** creates a task force to examine and design statewide standards for the operation of mental health courts.

The House returned **S.22** to the Senate with amendments. This bill **EXPANDS THE JURISDICTION OF THE STATE GRAND JURY TO INCLUDE ENVIRONMENTAL OFFENSES**. The bill extends the subject matter jurisdiction of the state grand jury to include wilful criminal violations that result in actual and substantial harm to the water, ambient air, soil or land, or both soil and land. Violations include, but are not limited to, violations of: the Atomic Energy and Radiation Control Act, the State Underground Petroleum Environmental Response Bank Act, the State Safe Drinking Water Act, the Hazardous Waste Management Act, the Infectious Waste Management Act, the Solid Waste Policy and Management Act, the Pollution Control Act, the Erosion and Sediment Control Act, the South Carolina Mining Act, and the Coastal Zone Management Act, or any crime arising out of or in connection with environmental laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the environment if the anticipated damages, including, but not limited to the cost of remediation, are one million dollars or more as certified by an independent environmental engineer who shall be contracted by the Department of Health and Environmental Control (DHEC). If the knowing and willful crime is a violation of federal law, then a conviction or an acquittal under federal law for the same act is a bar to the impaneling of a state grand jury. The bill requires that in investigations of crime, except in matters where DHEC or its officers or employees are subjects of investigation, the Commissioner of DHEC must consult with and, after investigation, provide a formal written recommendation to the Attorney General and the Chief of the South Carolina Law Enforcement Division (SLED). The Attorney General and the Chief of SLED must consider the impaneling of a state grand jury necessary before the Attorney General presents a petition, which includes the Commissioner's written recommendation, to the Chief Administrative Judge. In the case of evidence brought to the attention of law enforcement by an employee or former employee of the alleged violating entity, the bill provides that there must also be separate, credible evidence of the violation in addition to the testimony or documents provided by the employee or former employee. Where an individual employee performs a wilful criminal violation of the environmental laws, only the individual employee is subject to investigation unless or until there is separate, credible evidence that the individual's employer knew of, concealed, directed, or condoned the employee's actions.

The House amended, approved, and sent to the Senate **H.3184**. This legislation makes comprehensive revisions with regard to **APPEALS TO AND FROM THE ADMINISTRATIVE LAW COURT AND VARIOUS AGENCIES AND COMMISSIONS**.

The stated intention of the legislation is to provide a uniform procedure for contested cases and appeals from administrative agencies. State entities affected by this legislation include: the State Ethics Commission, the Employment Security Commission, the Public Service Commission, the State Human Affairs Commission, the State Employee Grievance Committee, the Procurement Review Panel, the Secretary of State (Solicitation of Charitable Funds), the Securities Commission, the South Carolina Commission for the Blind, the Commissioner of Agriculture, the State Crop Pest Commission, the State Livestock-Poultry Health Commission, the Department of Health and Environmental Control (SC Mining Act and Coastal Tidelands and Wetlands); SC State Ports Authority, Division of Aeronautics of the Department of Commerce, the State Board of Education (teacher licenses, charter schools, and non-public- postsecondary institution licensing), and the Department of Motor Vehicles.

Provisions of the legislation include:

- In general, the bill grants the court of appeals jurisdiction to hear cases in which an appeal is taken from a final decision of an administrative law judge or a final decision of an agency.
- A final decision of the Public Service Commission setting public utility rates is appealable directly to the Supreme Court.
- Unless otherwise provided by law, the standard of proof in a contested case is by a preponderance of the evidence.
- Except as otherwise provided, the serving and filing of notice of appeal does not itself stay enforcement of an agency decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed.
- Notwithstanding any other provision of law, a state agency authorized by law to seek injunctive relief may apply to the Administrative Law Court for injunctive or equitable relief. This does not affect the authority of an agency to apply for injunctive relief as part of a civil action filed in the court of common pleas.
- Notwithstanding another provision of law, the Administrative Law Court has jurisdiction to review and enforce an administrative process issued by a department of the executive branch of government such as a subpoena, administrative search warrant, cease and desist order, or other similar administrative order or process. A department of the executive branch of government authorized by law to seek an administrative process may apply to the chief administrative law judge or his or her designee to issue or enforce an administrative process. A party aggrieved by an administrative process issued by a department of the executive branch of government may apply to the chief

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administrative law judge for relief from the process as provided in the Rules of the Administrative Law Court.

- After a contested case is initiated before the Administrative Law Court, any party may move before the presiding administrative law judge to lift the stay imposed.
- All hearings before an administrative law judge must be conducted exclusively in accordance with the rules of procedure promulgated by the court. All other rules of procedure for the hearing of contested cases or appeals by individual agencies, whether promulgated by statute or regulation, are of no force and effect in proceedings before an administrative law judge.
- A party aggrieved by the decision of the Chief Procurement Officer in a contract controversy, when the amount in controversy exceeds \$250,000 thousand dollars, may remove the contract controversy from the Procurement Review Panel to the Administrative Law Court by filing a notice of removal with the court and the panel within 10 days after a hearing was requested before the Procurement Review Panel. Upon filing of the notice of removal, the administrative law judge shall decide all issues in the contract controversy presented to and ruled upon by the chief procurement officer. The administrative law judge shall apply the applicable public contract law and the precedents of the Procurement Review Panel.
- A person aggrieved by a final order of the Securities Commissioner may obtain appellate review of the order filing, a notice of appeal in the Administrative Law Court within 30 days after the entry of the order praying that the order be modified or set aside in whole or in part. The aggrieved person, upon filing a notice of appeal, may move before the Administrative Law Court for a stay of the commissioner's final order until the administrative law judge has reviewed the order. If the administrative law judge orders a stay, the aggrieved person must post a bond if set by the administrative law judge. A copy of the notice of appeal must be served upon the securities commissioner, and the securities commissioner shall certify and file in the Administrative Law Court a copy of the filing and evidence upon which the order was entered. The findings of the securities commissioner as to the facts, if supported by reliable, probative, and substantial evidence, are conclusive.
- An order, decision, or other official act which revokes a registration or license issued by the Commissioner of Agriculture, may be appealed by a person concerned by filing a notice of appeal with the Administrative Law Court and by serving the commissioner or someone of discretion at his or her office, within 30 days after receipt of written notice of the order, decision, or official act affecting the registration or license of the person concerned. The commissioner, within 30 days after service of the notice of appeal, shall make a return to the Administrative Law Court as provided in its appellate rules.
- The duties, functions, and responsibilities of all hearing officers of the Department of Motor Vehicles are devolved upon the Administrative Law Court effective July 1, 2005.

- The legislation creates within the Administrative Law Court the Division of Motor Vehicle Hearings.

The House amended Senate amendments to **H.3155**, the **SOUTH CAROLINA EDUCATION AND ECONOMIC DEVELOPMENT ACT**, and returned the bill to the Senate.

The House approved and sent to the Senate **H.3847** pertaining to **STATE FUNDS**. This bill requires that, upon the ratification of a specified corresponding amendment to the South Carolina Constitution the first ten percent of any surplus general fund revenues for any fiscal year must be placed in the General Reserve Fund for use in offsetting operating deficits. The bill provides that no restoration within three fiscal years is required for General Reserve Funds used to cover an operating deficit which were derived from the requirement that the first ten percent of any surplus general fund revenue for any fiscal year be placed in the General Fund. The bill further provides that, upon ratification of a specified corresponding amendment to the State Constitution appropriations from the Capital Reserve Fund take effect on September first of the following fiscal year. The bill provides that unobligated surplus General Fund revenues are also available for expenditure after September first of the next fiscal year and after the state's financial books for the previous year have been closed. The bill provides that if the Comptroller General determines upon the closing of the state's financial books for a fiscal year that the State has a negative Generally Accepted Accounting Principles Fund balance (GAAP Fund Deficit), any appropriations contained in a general or supplemental appropriations act which expends surplus general fund revenues or in a Capital Reserve Fund appropriations act to be effective during the next fiscal year are suspended and must be used to the extent necessary to offset the GAAP Fund deficit in the manner the General Assembly shall provide. The bill requires that each state entity receiving three percent or more of the State's General Fund appropriations for any fiscal year must provide an estimate of its planned General Fund expenditures for the next three fiscal years. The bill requires the Office of State Budget to use this estimate and the Board of Economic Advisors' long-term revenue estimate to compile a three-year financial plan which shall be updated annually and distributed as provided in the bill.

The House approved and sent to the Senate **H.3735**. This bill **REQUIRES AND PROVIDES FOR THE DEPARTMENT OF MOTOR VEHICLES (DMV) TO SUSPEND THE REGISTRATION OF, AND NOT REREGISTER, A MOTOR VEHICLE THAT WAS OPERATED WHEN ITS DRIVER FAILED TO PAY A TOLL AND WHOSE OWNER HAS AN OUTSTANDING JUDGEMENT FOR FAILURE TO PAY A TOLL**. The bill provides a procedure for entering a judgment against the owner or operator of the vehicle and provides that the suspension or denial of registration or reregistration must remain in effect until the judgement is satisfied as provided in the bill.

The House amended, approved, and sent to the Senate **H.3478**. This bill revises **GROUND FOR DENIAL OF LICENSURE OR FOR DISCIPLINARY ACTION AGAINST REAL ESTATE PROFESSIONALS** (including brokers, agents, and property managers) by clarifying that payment of a commission or compensation to an unlicensed individual is prohibited for conducting activities requiring a license.

The House approved and sent to the Senate **H.3175**. Currently, the Department of Health and Environmental Control (DHEC) administers hearing aid dealer registration and licensure. A Commission of Hearing Aid Specialists made up of five hearing aid



dealers, one otolaryngologist (ear, nose, and throat doctor), a lay member, and the State health officer prepare the licensure examinations and advise DHEC in the administration of this program. This bill establishes the Board of Examiners for **HEARING INSTRUMENT SPECIALISTS AND FITTERS** under the Department of Labor, Licensing, and Regulation and transfers permit and licensure authority for hearing aid dealers from DHEC to this new board. The board would be made up of five hearing instrument specialists, one otolaryngologist, and one layperson. **H.3175** amends the current definition of the term, 'practice of specializing in hearing aids,' to allow a practitioner, at the request of a physician or related profession, to prepare audiograms for that professional's use. **H.3175** requires hearing instrument specialists to conduct a hearing assessment prior to dispensing a hearing aid to measure pure tone audiometry, speech audiometry, and hearing aid evaluation. **H.3175** requires practitioners to be licensed either as a hearing instrument specialist or as a hearing aid fitter. To be licensed as a specialist the applicant must: (1) be certified by the National Board for Certification in Hearing Instrument Sciences; (2) have at least a GED; and (3) pass an examination approved by the board. To be licensed as a fitter an applicant must: (1) be supervised by a licensed hearing instrument specialist; (2) have at least a GED; and (3) pass an examination approved by the board. The board may issue to an applicant a temporary permit valid for 12 months; the permit may be renewed for another 12 months. During the temporary permit period, the permit holder must pass an examination approved by the board. The bill further requires that licensed hearing instrument specialists and fitters must receive at least 16 hours of continuing education every two years.

The House approved and sent to the Senate **H.3299**, a bill which provides that a specified section of roadway in Beaufort County is designated as a South Carolina Scenic Byway, to be known as **OLD SHELDON CHURCH ROAD SCENIC BYWAY**.

## HOUSE COMMITTEE ACTION

### AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

The full committee did not meet this week.

### EDUCATION AND PUBLIC WORKS

The full committee did not meet this week.

### JUDICIARY

The Judiciary Committee met on Tuesday, April 12, 2005.

**H.3050**, relating to **APPEALS FROM THE PROBATE COURT**, was recommitted to the Special Laws Subcommittee.

The full committee gave a favorable report to **H.3700**. This bill provides that **MATTERS BETWEEN A LANDLORD AND A TENANT** must be tried where the subject matter or some part of the property is situated.

**H.3588** received a favorable report. The bill repeals current law relating to the validity of a marriage contracted without the issuance of a license; the bill provides that a **COMMON LAW MARRIAGE** in this State may not be recognized on and after January 1, 2006. Exceptions are provided for common law marriages existing as of December 31, 2005.

The full committee gave a favorable with amendment report to **H.3039**. This bill provides that **FAMILY COURT AND PROBATE COURT HAVE CONCURRENT JURISDICTION TO HEAR AND DETERMINE MATTERS RELATING TO PATERNITY, COMMON-LAW MARRIAGE, AND INTERPRETATION OF MARITAL AGREEMENTS**. However, the bill further provides that the concurrent jurisdiction of the probate court extends only to matters dealing with the estate, trust, and guardianship and conservatorship actions before the probate court.

**H.3141**, a bill requiring **REGULATIONS TO HAVE AFFIRMATIVE APPROVAL BY THE GENERAL ASSEMBLY**, received a favorable with amendment report from the Judiciary Committee. Under the current law, there is no affirmative approval by both legislative bodies required to enact a regulation. This bill removes the 120-day clock for automatic approval of a regulation and replaces it with a requirement for approval by the General Assembly. Additionally, the bill requires specific agency power to modify or establish any fee set by regulation.

In general, this bill requires an agency submitting a regulation to file the regulation with Legislative Council along with a detailed summary of the proposed changes. The bill enhances the requirement that regulations be submitted in the same format as a bill (underline and strikethrough). The bill requires that the Speaker of the House and the President of the Senate refer the legislation to a standing committee and that Legislative Council inform the membership of the General Assembly electronically upon receipt of a regulation for review. Both the House and Senate committees that are most concerned with the functions of the submitting agency will review the regulation. There will be an affirmative vote by the General Assembly required for enactment of the regulation. A regulation will be deemed withdrawn if it has not become effective at the end of the two-year session in which it was submitted.

Under the bill, an agency may not submit any regulation that went through public notice and comment period and was changed afterwards without the changes being raised, discussed or considered during the public comment period. The bill disallows the filing of an emergency regulation, if a joint resolution disapproving that same regulation has received a favorable report by the standing committee to which the regulation was referred. The bill does allow any agency that has submitted a regulation for review to withdraw that regulation at any time and resubmit the regulation without the requirements of notice and comment if there is no substantive change.

**H.3243**, the “**YOUTH ACCESS TO TOBACCO PREVENTION ACT OF 2005**,” received a favorable with amendment report from the full committee. Under this bill, it is unlawful for a person to sell, furnish, give, distribute, purchase for, or provide a minor under the age of 18 a tobacco product.

The bill also provides that it is unlawful to sell a tobacco product to an individual who does not present upon demand proper proof of age. Proof of age is not required from an individual who the person reasonably believes to be over 27 years of age. The bill further provides that a retail distributor of tobacco products must provide training to its employees about selling tobacco related products. Any retail establishment that does not provide training is subject to a fine of not more than \$1,000 dollars.

The bill makes it unlawful for a person under 18 to possess a tobacco product. Exceptions are made for people under 18 who make certain deliveries.

Violations are misdemeanors triable exclusively in either municipal or magistrate court. For a first offense, the penalty is a fine of not less than \$100 dollars. For a second offense, which occurs within three years of the first offense, the penalty is a fine of not less than \$200 dollars. For third and subsequent offenses, which occur within three years of the first offense, the penalty is a fine of not less than \$300 dollars. In lieu of these penalties, the court may require an individual who is less than 18 who illegally purchases or possesses a tobacco product to perform not less than 24 hours of community service for the first offense and not less than 40 hours of community service for a second or subsequent offense. A person who is less than 18 may have his or her record expunged upon becoming 18 if the person has paid the fine imposed and successfully completed any court-ordered community service. A violation of the provisions of this bill does not violate an establishment's beer and wine permit and is not a ground for revocation or suspension of a beer and wine permit. Also, a conviction does not affect a person's eligibility for a LIFE Scholarship or any other state sponsored scholarship program.

The Judiciary Committee gave a favorable with amendment report to **H.3489**, relating to **NONPARTISAN COUNTY ELECTIONS**. The provisions of this bill apply to the election of members of the governing body of a county and the following county offices: auditor, treasurer, clerk of court, probate judge, sheriff, coroner, and register or mesne conveyance. A county may choose to elect some officers in nonpartisan elections and others in partisan elections.

The bill provides three alternative methods of nominating candidates for and determining the results of nonpartisan elections. The three methods are: (1) the nonpartisan plurality method, (2) the nonpartisan election and runoff election method, and (3) the nonpartisan primary election and general election method. Procedures are outlined in the bill for determining elections results under each of the three methods; there are procedures in the event of a tie. The bill also has procedures for placing the name of a candidate on the ballot in nonpartisan elections.

A county may choose to elect the members of its governing body and any of the county officers in a nonpartisan election by one of the following methods: (1) the governing body may adopt an ordinance, or (2) a referendum requesting that one of the three methods of nominating a candidate in a nonpartisan election be implemented as called by a petition of not less than five percent of the registered electors of the county.

If nonpartisan elections are not provided for, nomination of candidates for county offices may be by party primary, party convention, or by petition in accordance with the

applicable provisions of the state election laws and the rules of county political party organizations not in conflict with this method.

**H.3489** provides that a referendum may be held to change the methods of election of county councils. The alternative methods of election which may be established are limited to: (1) at-large from the county; (2) from defined single-member election districts; (3) at-large with residency requirements; (4) any combination of 1, 2, and 3, or (5) any other method in effect in the county when the referendum is held.

**H.3224**, relating to **HEALTH CARE POWERS OF ATTORNEYS**, was recommitted to the General Laws Subcommittee.

**H.3621**, a **PROPOSED CONSTITUTIONAL AMENDMENT TO ALLOW CERTAIN CHARITABLE ORGANIZATIONS TO CONDUCT RAFFLES**, received a favorable with amendment report. As of April 18, 2005, the amendment was not available.

The full committee gave a favorable with amendment report to **H.3222**. This bill pertains to the **ADOPTION AND TERMINATION OF PARENTAL RIGHTS WHEN THE CHILD IS CONCEIVED AS A RESULT OF CRIMINAL SEXUAL CONDUCT OR INCEST**. As of April 18, 2005, the amendment was not available.

## LABOR, COMMERCE AND INDUSTRY

The full House Labor, Commerce and Industry Committee met on April 12 and gave a favorable report on **H.3490**, a bill pertaining to **INCIDENTAL CHECK-CASHING BY RETAIL BUSINESSES**. This bill revises the exemption from check-cashing service licensure requirements that is provided for a person who, incidentally to or independently of the operation of a bona fide retail business, from time to time cashes a check, draft, or money order, so as to provide that a fee may be charged for such an incidental service so long as it does not exceed the statutory fee schedule.

The committee recommitted **H.3525** to the Public Utilities Subcommittee. This bill pertains to the **REQUIREMENT OF A MUNICIPALITY TO PROVIDE SEWER AND WATER SERVICE**.

## MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

The House Medical, Military, Public and Municipal Affairs Committee met on Tuesday, April 12, 2005.

The full committee voted to adjourn debate on **H.3254**, the **"REGISTERED SURGICAL TECHNOLOGIST AND LICENSED SURGICAL ASSISTANT PRACTICE ACT."** Prior to adjournment, a motion was noted to reconsider whereby the full committee rejected **H.3254**.

The full committee adjourned debate on **H.3405**, relating to the **LICENSURE AND REGULATION OF PODIATRISTS**.

**H.3741** received a favorable report from the full committee; this bill provides **MEDICAL SCHOOL DEBT FORGIVENESS FOR DOCTORS WHO SPECIALIZE IN GERIATRIC MEDICINE**. The bill establishes a state loan repayment program within the Division of Aging. The program will reimburse student loan payments for up to four physicians at a time who are licensed in South Carolina and are trained in geriatrics. In order to be eligible, a physician will have to enter into a contract with the Division of Aging to practice in the State for at least five consecutive years, accept Medicare and Medicaid patients, accept insurance assignment rates, and not discriminate against patients based on the ability to pay. The program will reimburse student loan payments for these physicians of up to \$35,000 per year times the number of years the physician completed in a geriatric fellowship.

**H.3741** establishes a Physician Advisory Board to review applicants and recommend physicians for the program. The board will be appointed by the Division of Aging and composed of representatives of: the South Carolina Medical Association; the South Carolina Commission of Higher Education; the Medical University of South Carolina; the USC School of Medicine; and a fellow in geriatrics or geropsychiatry. Board members will serve at the pleasure of the Division and without compensation except for mileage, subsistence and per diem.

The board is directed to consider demonstrable need and try to select candidates who will continue to practice in the State after completing the program contract. Applicants will be prioritized as follows:

1. South Carolina natives completing fellowship programs in South Carolina;
2. Out-of-state applicants completing fellowship programs in South Carolina;
3. South Carolina natives completing out-of-state fellowship programs;
4. Out-of-state applicants completing out-of-state fellowship programs.

If a physician in the program is found to be out of compliance with the terms of his or her contract, the Advisory Board is to recommend a penalty. The amount of the penalty is not to exceed three times the total reimbursement received plus interest at the prime rate plus ten percent.

**H.3604**, pertaining to **PHYSICAL THERAPISTS**, was recommitted to subcommittee.

**H.3467** received a favorable with amendment report from the full committee. This bill authorizes the **DEPARTMENT OF SOCIAL SERVICES (DSS) TO IMPOSE FINES WHEN THERE IS A VIOLATION OF STATUTE OR REGULATION PERTAINING TO A PROGRAM DSS REGULATES**. DSS regulates programs for childcare, residential group homes, foster homes and adoption/placement agencies. Currently, the only action DSS can take when one of these facilities is in violation is to issue a warning or to suspend, revoke or deny a license or registration. Foster homes would be exempt from civil fines imposed by DSS.

**H.3467** requires DSS to promulgate regulations that will cover conditions under which a fine will be assessed as well as a schedule of fine ranges that take into account the severity and frequency of violations. The regulations must include the right to a contested case hearing by DSS and an opportunity for judicial review of the agency's decisions.

**H.3467** provides that licenses for residential group homes, childcare facilities, and adoption/placement agencies will be good for two years. Fire inspections will continue to be required on an annual basis for residential group homes and child care facilities.

## WAYS AND MEANS

The Ways and Means Committee reported favorable on **H.3847**, regarding the **GENERAL FUND AND THE CAPITAL RESERVE FUND**. This bill requires that, upon ratification of a specified corresponding amendment to the South Carolina Constitution the first ten percent of any surplus general fund revenues for any fiscal year must be placed in the General Reserve Fund for use in offsetting operating deficits. The bill provides that no restoration within three fiscal years is required for General Reserve Funds used to cover an operating deficit which were derived from the requirement that the first ten percent of any surplus general fund revenue for any fiscal year be placed in the General Fund.

The bill further provides that, upon ratification of a specified corresponding amendment to the State Constitution (see **H.3846** above, #2) appropriations from the Capital Reserve Fund take effect on September first of the following fiscal year. The bill provides that unobligated surplus General Fund revenues are also available for expenditure after September first of the next fiscal year and after the state's financial books for the previous year have been closed.

The bill provides that if the Comptroller General determines upon the closing of the state's financial books for a fiscal year that the State has a negative Generally Accepted Accounting Principles Fund balance (GAAP Fund Deficit), any appropriations contained in a general or supplemental appropriations act which expends surplus general fund revenues or in a Capital Reserve Fund appropriations act to be effective during the next fiscal year are suspended and must be used to the extent necessary to offset the GAAP Fund deficit in the manner the General Assembly shall provide.

The bill requires that each state entity receiving three percent or more of the State's General Fund appropriations for any fiscal year must provide an estimate of its planned General Fund expenditures for the next three fiscal years. The bill requires the Office of State Budget to use this estimate and the Board of Economic Advisors' long-term revenue estimate to compile a three-year financial plan which shall be updated annually and distributed as provided in the bill.

The Committee reported favorable on **H.3846**, a joint resolution **PROPOSING FOUR CONSTITUTIONAL AMENDMENTS REGARDING THE GENERAL FUND AND THE CAPITAL RESERVE FUND**. This resolution requires a referendum with four separate questions to determine whether the South Carolina Constitution should be amended so as to:

1. Provide that the State's General Reserve Fund shall consist not only of three percent of the General Fund Revenue of the latest completed fiscal year, but also the first ten percent of any surplus general fund revenues accruing for any fiscal year;

2. Provide that appropriations from the Capital Reserve Fund take effect on September first of the following fiscal year;
3. Provide that surplus General Fund Revenues for any fiscal year not otherwise obligated and appropriations to the Capital Reserve Fund are deemed to have occurred and are available for expenditure after September first of the next fiscal year and after the state's financial books for the previous fiscal year have been closed;
4. Provide that if the Comptroller General determines upon the closing of the state's financial books for a fiscal year that the State has a negative Generally Accepted Accounting Principles Fund balance (GAAP Fund Deficit), any appropriations contained in a general or supplemental appropriations act which expends surplus general fund revenues or in a Capital Reserve Fund appropriations act to be effective during the next fiscal year are suspended and must be used to the extent necessary to offset the GAAP Fund deficit in the manner the General Assembly shall provide.

The Committee reported favorable with amendment on **H.3794**. As reported by the Committee, this bill **MAKES CHANGES TO THE SOUTH CAROLINA RESEARCH AUTHORITY** (SCRA), including but not limited to the following:

- Creates two divisions within the SCRA - the South Carolina Research Division (SCRD) and the South Carolina Research Innovation Centers (SCRIC);
- Revises the composition of the SCRA board, including:
  - Deleting the Chair of the State Development Board and the Chair of the Technical Advisory Board of the SCRA as *ex officio* members and adding as *ex officio* members, the Chair of the House Ways and Means Committee, the Chair of the Senate Finance Committee, and the Secretary of Commerce, or their respective designees;
  - Creating an Executive Committee of the board, comprised of the Presidents of Clemson, MUSC, and USC-Columbia, and the Governor or his designee, and the Chairman of the Board of Trustees, and authorizing this Executive Committee to implement recommendations and direct the executive director on policy decisions for day-to-day operations of the SCRA;
  - Requiring the Executive Committee to appoint a business and science advisory board to include representatives from each research university, the venture capital industry, relevant industry leaders, and the Department of Commerce, and charging this advisory board to advise the board when requested;
- Deletes the Technical Advisory Board of the SCRA, whose current purpose is to advise and assist the board when so requested;
- Requires and provides for the SCRIC to establish three Research Innovation Centers in South Carolina (one in Charleston associated with MUSC, one in Columbia associated with USC, and one in the Upstate associated with Clemson) to: enhance the research and technology transition capabilities of the

- three research universities, establish a continuing dialogue forum between the research universities and industry, and promote the development of high tech industries and applied research facilities in South Carolina;
- Defines “Research Park” as the Clemson Research Park in Anderson County, the Carolina Research Park in Columbia, any park developed at Line Street and Hagood Avenue in downtown Charleston, and any park mutually designated by the SCRA and the participating Research University;
  - Requires that the SCRIC be funded by a direct payment of funds by the SCRA, as delineated in the bill, for at least the first three years of the centers’ existence;
  - Provides that after this three year period, the State shall explore methods to provide additional funding (may include direct appropriation from the General Fund, private donations, or other funds) until the Innovation Centers have a reasonable opportunity to become self-sustaining;
  - Requires that costs associated with the physical space for the centers must be financed through the issuance of general obligation debt or by private match funding, as provided in the bill;
  - Authorizes the SCRIC to:
    - admit qualified companies, as described in the bill, and pre-company initiatives into a center and grant these companies up to two hundred thousand dollars each as well as physical and staff resources;
    - allow these companies to remain in an innovation center for up to four years or until exceeding one million dollars in annual commercial revenue;
    - Allow rent and fees for services initially to be waived;
  - Requires the SCRIC to use monetary grants for proof-of-concept studies, Small Business Innovation Research program matches, the protection of intellectual property, and other similar uses.

The Committee reported favorable on **S.483**, the “**SOUTH CAROLINA STATE UNIVERSITY ACADEMIC AND ADMINISTRATIVE FACILITIES BOND ACT.**” This bill authorizes (subject to approval of the Joint Bond Review Committee and the State Budget and Control Board) and prescribes the manner in which, and conditions under which, South Carolina State University may issue certain revenue bonds to finance or refinance all or part of the cost of acquisition, construction, renovation, and improvement of land, buildings, and other improvements to real property and equipment for the purpose of providing certain academic and administrative buildings.

The Committee reported favorable on **H.3156**, regarding the **POWERS OF THE MEDICAL UNIVERSITY HOSPITAL AUTHORITY**. The bill provides that a capital lease purchase by the Medical University Hospital Authority of a single piece of equipment with cost in excess of five million dollars, requires prior approval by the State Budget and Control Board.

The Committee reported favorable with amendment on **H.3799**. As reported by the Committee, this joint resolution **AUTHORIZES AND PROVIDES FOR STATE AGENCIES TO ESTABLISH A SPECIAL ACCOUNT FOR THE PURPOSE OF FUNDING NONRECURRING IMPLEMENTATION EXPENSES OF THE SOUTH CAROLINA ENTERPRISE INFORMATION SYSTEM \*(SCEIS)**. (\*The SCEIS is a single enterprise information system to be used by state agencies, commissions, and



boards that process their respective financial and payroll information through the Comptroller General's legacy applications today. The principal objectives are to reduce administrative costs; improve accuracy, timeliness and security of financial transactions and information; and improve services provided to South Carolina citizens and businesses.) The joint resolution also expresses the General Assembly's intent that agencies pursue grants and other nonstate funding sources to fund their portion of the SCEIS implementation.

The Committee reported favorable with amendment on H.3813. As reported by the Committee, this bill establishes and provides for the **NATIONAL GUARD RETIREMENT SYSTEM** (the System) to provide pension benefits for members of the National Guard of South Carolina who became members of the National Guard of South Carolina before July 1, 1993. Administration and operation of the System are vested in the State Budget and Control Board (the Board), and the Board is charged to engage the actuarial and other services required to transact the business of the System. The bill requires the Actuary to investigate at least once every five years, the mortality, service, and compensation experience of the System participants and make a valuation of the contingent assets and liabilities of the System, and adopt for the System such tables as are necessary, based on this investigation. The Actuary is also required to make a valuation of the contingent assets and liabilities of the System at least every other year.

The bill requires that every eligible member of the National Guard of South Carolina who became a member before July 1, 1993, shall receive from the System, commencing at age sixty, a fifty dollar per month pension for twenty years creditable service with an additional five dollars per month for each additional year of creditable service, with the total pension not to exceed one hundred dollars per month. To receive the pension, each member must have served and qualified for at least twenty years creditable military service, as provided in the bill; must have at least fifteen years of this service as a member of the South Carolina National Guard with the final or last ten years of service before retirement in the National Guard of South Carolina; must have received an honorable discharge from the National Guard of South Carolina. The bill prohibits payment of any benefit to beneficiaries upon the member's death. Also, individuals receiving retired pay or physical or disability retirement from any of the regular components of the United States Armed Forces are not eligible for benefits under this System. Benefits under this System are exempt from South Carolina income tax.

The Committee reported favorable on S.320, a bill concerning **UNIVERSITY OF SOUTH CAROLINA ATHLETIC FACILITIES REVENUE BONDS**. The bill raises from forty million dollars to sixty million dollars, the outstanding debt limit for University of South Carolina athletic facilities revenue bonds.

The Committee reported favorable on H.3297. This bill **PROVIDES AN EXEMPTION FROM SALES TAX FOR PRESCRIPTIONS FOR THE TREATMENT OF RHEUMATOID ARTHRITIS**.

The Committee reported favorable on H.3580. This bill **ALLOWS AN ANNUAL DEDUCTION OF UP TO THREE THOUSAND DOLLARS FROM TAXABLE INCOME OF MEMBERS OF THE STATE GUARD** who meet certain requirements delineated in the bill.

The Committee reported favorable with amendment on **H.3768**. This comprehensive bill is a **DEPARTMENT OF REVENUE (DOR) "CLEAN-UP BILL," WHICH AMENDS NUMEROUS SECTIONS OF THE TAX CODE**. Provisions included in the Committee-approved bill include, but are not limited to: provides protection from lawsuits to third parties, such as banks, which remit funds to DOR as a result of a levy; puts into permanent law language from the budget allowing for a 20% collection assistance fee which DOR may collect for overdue tax debts, with the revenue from this fee directed to the DOR South Carolina Business One Stop program; allows a sales tax exemption for prescription and over-the-counter medicines and medical supplies sold to a health care clinic that provides free medical and dental care to its patients (consistent with language in the budget); conforms the State Tax Code to the Internal Revenue Code, as amended through 2004.

The Committee reported favorable with amendment on **H.3767**. This bill also includes **NUMEROUS REVISIONS AND TECHNICAL CHANGES TO SOUTH CAROLINA TAXATION PROVISIONS** including, but not limited to: authorizing tax preparers to sign returns electronically; including amounts attributable to lottery and bingo winnings as taxable income reportable by nonresidents; amending provisions regarding job development credits by providing that the county designation is effective as of the date the application for credits is received in the Office of the Coordinating Council, rather than the date the preliminary revitalization agreement is entered into; amending provisions regarding the Department of Revenue's power to summon a person by providing that an Administrative Law Judge hold a contempt hearing on failure to comply with a summons; and amending provisions relating to sanctions against a person authorized to represent a taxpayer administratively, by including a monetary penalty.

The Committee reported favorable with amendment on **H.3638**. This bill includes numerous provisions **RELATED TO SALE OF ALCOHOL BY THE DRINK**. The bill includes provisions: requiring that alcoholic liquor sold by the drink must be purchased only from specifically licensed persons as provided in the bill; providing that alcoholic liquor by the drink may be purchased in any size bottle except 1.75 liter size bottles by a person licensed under the provisions of the bill for sale and use for on-premises consumption from a Class (A) wholesale distributor and a federally licensed Class (B) retail liquor store; imposing an excise tax of five percent of the gross proceeds of sales of liquor by the drink for on-premises consumption in licensed establishments; requiring that entities which receive minibottle tax revenue shall receive at least the same amount of revenues from the new excise tax as they did from minibottle tax revenue during fiscal year 2004-05, and if they do not, the difference must be made up from the state general fund; providing that wholesale liquor distributors and retail liquor stores may deliver, in sealed containers, alcoholic liquor for sale by the drink to establishments licensed for on-premises consumption; prohibiting a licensee from substituting another brand of liquor in place of the brand specified by a customer except as provided in the bill, and providing penalties for violation of this provision; and prohibiting a licensee from refilling or reusing a bottle of liquor or otherwise tampering with the contents of the bottle, and providing penalties for violation of this provision.

## BILLS INTRODUCED IN THE

# HOUSE THIS WEEK

## AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

### **H.3908 *UNIFORMITY AMONG GAME ZONES* Rep. Coleman**

To the extent the board or the Department of Natural Resources has the authority and responsibility to set the open and closed seasons for the taking of fish or game, the bag or size limits for fish or game taken, or any other conditions or limitations regarding the taking of fish or game except for dog driving, this bill provides that these seasons, bag or size limits, or other conditions or limitations must be the same for all game zones which the board or department sets. The bill further provides that the conditions or limitations must be consistent with the provisions for a majority of other game zones that are set by law.

### **H.3909 *SHELLFISHERIES* Rep. Ceips**

This House Resolution encourages the Department of Natural Resources to review and evaluate South Carolina's commercial, recreational, and agricultural shellfisheries to ensure the proper management of those resources now and in the future.

### **H.3922 *"MERCURY SWITCH REMOVAL ACT OF 2005"* Rep. Witherspoon**

Mercury is often found in hood or trunk light switches of vehicles. The stated purpose of this bill is to reduce the quantity of mercury in the environment by removing mercury switches from end-of-life vehicles and by creating a collection and recovery program for mercury switches removed from end-of-life vehicles in South Carolina. 'End-of-life vehicle' means a vehicle that is sold, given, or otherwise conveyed to a vehicle recycler or scrap recycling facility for the purpose of recycling.

In order to achieve reductions of mercury in the environment through removal and collection of mercury switches from motor vehicles weighing less than 12,000 pounds, this bill provides that every manufacturer of motor vehicles sold in this State shall develop a mercury minimization plan. This plan is to be filed with the Department of Health and Environmental Control (DHEC). The bill provides for certain costs with regard to the collection and recovery of mercury switches to be paid by the vehicle manufacturer. The bill has provisions pertaining to the recycling, storage, and disposal of mercury switches, including designating mercury switches as universal waste. DHEC is required to promulgate regulations for the management of these switches. Violations are misdemeanors, and upon conviction a person must be punished by a fine not exceeding \$500 dollars or by a term of imprisonment not exceeding 60 days, or both. Each violation constitutes a separate offense.

### **H.3939 *INDIVIDUAL SEWAGE TREATMENT AND DISPOSAL SYSTEM PERMIT* Rep. Loftis**

Notwithstanding any other provision of law, this bill provides that a permit for an individual sewage treatment and disposal system must be issued by the Department of Health and Environmental Control if a public sewage system is available but not operating in compliance with state and local regulations if other permit requirements are met.

## EDUCATION AND PUBLIC WORKS

### **S.401 ELIGIBILITY FOR LIFE SCHOLARSHIP Sen. Sheheen**

This bill provides that in addition to other provisions regarding eligibility for the LIFE Scholarship, a student may be eligible if he has completed at least three of the final four years of high school in this State, or he may be eligible if his parent or guardian has served in or retired from one of the United States Armed Forces within the last four years, paid income taxes in this State for a majority of the years of service, and is a resident of this State. These students must also be eligible for in-state tuition and fees as provided in the bill.

### **H.3917 AUTOMATED TRAFFIC CONTROL SYSTEMS Rep. Viers**

This bill prohibits a local government from enacting an ordinance that allows an "automated traffic control system" (as defined in the bill) to be installed at a highway intersection.

### **H.3924 REDRAWN SCHOOL ZONES Rep. Herbkersman**

This bill provides that if a school zone is redrawn to exclude a student who has already begun to attend a school, the student may continue to attend the school for which he is no longer zoned until the student graduates to the next level of school, without paying the reimbursement fee.

### **H.3925 QUALIFICATIONS FOR SCHOOL ATTENDANCE Rep. Herbkersman**

This bill changes one of the qualifications considered for a child to attend the public schools in a district by increasing from \$300 to \$10,000 the assessed value of property which the child owns, excluding cemetery lots. The bill allows a child who owns real estate with an assessed value of three hundred dollars or more and who attends a school in the district before the provisions of this bill become effective, to continue attending a public school in the school district in which the real estate is located.

### **S.68 LIFE SCHOLARSHIPS Sen. Short**

This bill provides a method for determining certain eligibility requirements for a home schooled student to receive LIFE Scholarships. The bill adds to the current description of institutions which may receive LIFE Scholarship funds, an independent bachelor's level institution which was incorporated in its original charter in 1962, was granted a license to operate in 1997 by the Commission on Higher Education, and has continued to maintain a campus in South Carolina. The bill also provides that in addition to current provisions, a student may be eligible for a LIFE Scholarship if he or she has completed at least three of the final four years of high school within this State, or if his or her parent or guardian has served in or retired from one of the U.S. Armed Forces within the last four years, paid income taxes in this State for a majority of the years of service, and is a resident of this State. Also, the student must be eligible for in-state tuition and fees. The bill also provides that the cumulative grade point average calculation for purposes of the LIFE Scholarship must be inclusive of the student's grade point average at all public or independent institutions attended by the student.

### **S.482 LIFE SCHOLARSHIPS Sen. Patterson**

This bill adds to the current description of institutions which may receive LIFE Scholarship funds, an independent bachelor's level institution which was incorporated in its original charter in 1962, was granted a license to operate in 1997 by the Commission on Higher Education, and has continued to maintain a campus in South Carolina. The bill also provides that in addition to current provisions, a student may be eligible for a LIFE Scholarship if he or she has completed at least three of the final four years of high school within this State, or if his or her parent or guardian has served in or retired from one of the U.S. Armed Forces within the last four years, paid income taxes in this State for a majority of the years of service, and is a resident of this State. Also, the student must be eligible for in-state tuition and fees.

**H.3933 MOTOR VEHICLE SUNSCREEN DEVICES Rep. Rice**

Currently, persons with physical conditions which necessitate the use of sunscreen material on a motor vehicle may do so if they provide a physician's affidavit, which must be updated every two years. This bill provides that this affidavit must be updated every year, and requires issuance to such person of a decal which must be displayed on the vehicle as provided in the bill.

**H.3934 COMPOSITION OF ETV COMMISSION Rep. Altman**

This bill revises the composition of the Educational Television Commission by adding six members, all of whom may appoint a designee to serve in their stead: the Chair of the House Ways and Means Committee, the Chair of the Senate Finance Committee, the Chair of the House Education and Public Works Committee, the Chair of the Senate Education Committee, the Speaker of the House, and the President of the Senate.

**H.3938 OUTDOOR ADVERTISING SIGNS Rep. Brady**

This bill provides that the Uniform Standards of Professional Appraisal Practices must be used in determining the fair market value of off-premises outdoor advertising signs for purposes of the property tax, and delineates factors which are included in such a determination.

## JUDICIARY

**S.13 "SOUTH CAROLINA TEACHER PROTECTION ACT OF 2005"**

**Sen. McConnell**

Under this legislation, a teacher may bring a civil action against a student who commits a criminal offense against the teacher if the offense occurs on school grounds or at a school-related event, or if the offense is directly related to the teacher's professional responsibilities. The bill does not limit the civil remedies available to another party as a result of the same criminal act.

In addition to the protections granted under the South Carolina Tort Claims Act, no teacher has civil liability to a student or to a party acting in interest of a student for an act or omission by the teacher that occurs while the teacher is acting on behalf of the school if the: (1) teacher was acting within the scope of the teacher's employment, (2) actions of the teacher did not violate the law, including regulations set by the individual district or school, (3) acts or omissions were not the result of wilful or intentional conduct or gross negligence, (4) acts or omissions were not the result of the teacher operating a motor

vehicle or watercraft; and (5) actions of the teacher do not constitute a violation of the student's civil rights.

Any student that commits simple assault and battery against a person affiliated with a school in an official capacity, when the offense occurs on school grounds or at a school-related event, or when the offense is directly related to the school official's professional responsibilities is guilty of a misdemeanor. The penalty upon conviction is a fine of not more than \$500 or 30 days imprisonment, or both.

Any student enrolled in a school that commits assault and battery (other than one that is aggravated) against a person affiliated with a school in an official capacity, when the offense occurs on school grounds or at a school-related event, or when the offense is directly related to the school official's professional responsibilities is guilty of a misdemeanor. The penalty upon conviction is a fine of not more than \$5,000, or not more than one year imprisonment, or both.

Any student enrolled in a school that commits assault and battery of a high and aggravated nature against a person affiliated with a school in an official capacity, when the offense occurs on school grounds or at a school-related event, or when the offense is directly related to the school official's professional responsibilities is guilty of a misdemeanor is guilty of a felony. The penalty upon conviction is a fine of not more than \$5,000, or not more than 10 years imprisonment, or both.

Among other things, this bill provides that at each proceeding the judge must inquire if the victim has been notified of the proceeding. If the victim is present at the proceeding, the judge must inquire if the victim desires to be heard at the proceeding.

**S.588 "SOUTH CAROLINA UNIFORM SECURITIES ACT OF 2005"**

**Sen. Martin**

This bill enacts the South Carolina Uniform Securities Act of 2005, which makes comprehensive revisions to securities laws. The bill divides into seven articles the securities laws that apply to South Carolina. There are two concurrent securities regulatory regimes: one at the federal level and the other at the state level. In enacting the National Securities Markets Improvements Act of 1996 and the Securities Litigation Uniform Standards Act of 1998, Congress preempted significant parts of state power to prevent duplicative state and federal regulation of securities. This bill reconciles, and attempts to achieve better coordination of, federal and state securities regulation.

**S.741 PROBATION REQUIREMENTS FOR SEX OFFENDERS Sen. Ford**

This concurrent resolution requests that the Department of Probation, Parole and Pardon Services place all persons who are determined to be sex offenders under global positioning system satellite surveillance continuously for the duration of their probationary sentences.

**H.3907 ADDITIONAL AT-LARGE CIRCUIT COURT JUDGES AND  
ADDITIONAL FAMILY COURT JUDGES FOR CERTAIN CIRCUITS**

**Rep. Wilkins**

This bill increases the number of at-large circuit court judges from 13 to 16.

This bill increases the number of family court judges in the fifth circuit (Kershaw and Richland Counties) from four to five. The bill increases the number of family court judges

in the ninth circuit (Charleston and Berkeley Counties) from six to seven. This bill increases the number of family court judges in the thirteenth circuit (Greenville and Pickens Counties) from six to seven.

**H.3910 *FLAGS FLOWN AT HALF-STAFF ON THE STATE CAPITOL BUILDING* Rep. Clark**

Upon the occurrence of an extraordinary event resulting in death or upon the death of a person of extraordinary stature, this bill provides that the Governor may order that the flags atop the State Capitol Building be lowered to half-staff at a designated time or for a designated period of time.

**H.3916 *PROBATE JUDGES* Rep. Chalk**

With regards to the requirement that the governing body of each county to provide the judge of probate with the necessary office equipment, books, office space, and personnel for the operation of the court, this bill provides that these judges have absolute control over these matters, including use of budgeted funds, employee classifications, compensation, and promotions.

**H.3923 *STATE PORTS AUTHORITY FACILITIES EMPLOYMENT* Rep. Limehouse**

This bill requires a fingerprint-based criminal history check of employees of the Ports Authority and other persons on terminals engaged in activities relating to cargo movement. The bill prohibits the employment of persons with certain criminal histories at Ports Authority Facilities. The bill outlines procedures necessary to implement the above provisions.

**H.3927 *PROPOSED JOINT RESOLUTION TO AMEND THE STATE CONSTITUTION WITH REGARDS TO CHARLESTON COUNTY AND THE ASSESSMENT AND COLLECTION OF AD VALOREM TAXES ON PROPERTY IN CHARLESTON COUNTY* Rep. Altman**

This joint resolution proposes to submit to the qualified electors at the next general election whether or not to amend the State Constitution so as to exempt Charleston County from the requirement that the General Assembly provide for the assessment and collection of ad valorem taxes on property located in a political subdivision. This joint resolution proposes to devolve those powers and responsibilities upon Charleston County Council for property located in Charleston County.

**H.3928 *STATE BOARD OF MEDICAL EXAMINERS' PROCEEDINGS* Rep. Sinclair**

With regards to disclosure of information relating to the State Board of Medical Examiners' proceedings, this bill further provides when certain information must become available for public inspection and copying. The bill outlines a process for when a proceeding becomes public. The bill also outlines when a witness may petition the board to close the hearing or record and provides when the board may issue an order to protect the witness from harm shown to be probable from public disclosure.

## **LABOR, COMMERCE AND INDUSTRY**

**H.3914 DEPOSIT OF REIMBURSEMENT FUNDS FOR INSTALLATION OF  
SEWER LINES BY A PUBLIC SERVICE/SPECIAL PURPOSE  
DISTRICT**

**Rep. Ceips**

This bill revises provisions regarding the powers of a commission of a special purpose or public service district by eliminating the requirement that monies realized from front-foot assessments, which are levied to reimburse a district for the cost of installing sewer lines, must be deposited in a bank located within the county in which the district is located.

**H.3915 FINANCING SEWER CONSTRUCTION BY A SPECIAL PURPOSE  
DISTRICT** **Rep. Pinson**

This bill provides that, notwithstanding another provision of law, a special purpose district which only provides sewage collection and disposal may use any method of financing the construction of sewer lateral collection lines within the district authorized by law.

**H.3920 MUNICIPALITIES PROHIBITED FROM REQUIRING ANNEXATION AS  
A CONDITION FOR EXTENDING WATER OR ELECTRIC SERVICES  
TO**

**NONRESIDENTS** **Rep. Viers**

This bill prohibits a municipality extending water or electric services beyond its corporate limits to nonresidents from requiring annexation as a condition for the receipt of the services.

## **MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS**

**H.3918 SMOKING IN A RESTAURANT** **Rep. Viers**

Under this bill, a local government may not enact an ordinance that prohibits smoking in a restaurant.

**H.3921 MOBILE DENTAL FACILITIES OR PORTABLE DENTAL OPERATION**  
**Rep. Clemmons**

This bill provides that mobile dental facilities or portable dental operations must be registered with the State Board of Dentistry. The bill outlines registration criteria as well as establishes facility operation requirements.

**H.3941 USE OF CORPORAL PUNISHMENT IN CHILDCARE FACILITIES**  
**Rep. J.E. Smith**

Notwithstanding another provision of law, this bill provides that a childcare facility required to be licensed, registered, or approved by the Department of Social Services (DSS) may not use corporal punishment as a manner of discipline. 'Corporal punishment' means spanking, slapping, or other physical discipline. A childcare facility must have a written policy on discipline, discuss it with the parent, and give the parent a copy when the child is enrolled. A change in the discipline policy must be shared with the parent in writing before going into effect. This bill does not apply to childcare provided by a: (1) person related to the child; or (2) church congregation or established religious denomination or religious college or university that notifies DSS that corporal punishment is part of its religious training.



## WAYS AND MEANS

### **H.3905 STATE AUDITS Rep. Chellis**

This comprehensive bill revises numerous provisions regarding the duties, oversight functions, and responsibilities of the State Auditor. These provisions include, but are not limited to, a requirement that in accordance with funding and to the extent practicable, the State Auditor shall periodically audit financial records of county and municipal treasurers, county clerks of court, magistrates, and municipal courts to report if certain fines and assessments are collected properly and remitted to the State Treasurer. The bill also provides for the use of independent accounting firms and generally accepted auditing principals and standards to perform audits.

The bill requires that the State Auditor maintain independence in the performance of his authorized duties and neither the Executive or Judicial branches of State government has the authority to limit the scope, direction, or report content of an audit undertaken by the State Auditor. The bill also includes provisions which are intended to preserve the independence and objectivity of the State Auditor and his employees

### **H.3906 PALMETTO FELLOWS SCHOLARSHIP PROGRAM Rep. Harrell**

This bill provides that, in addition to current qualifications required for a Palmetto Fellows Scholarship, a student shall have either of the following:

- a minimum score of 1200 on the SAT or an equivalent ACT score; a cumulative 3.5 grade point ratio at the end of the junior year; and rank in the top six percent of the class at the end of the sophomore or junior year or at the end of the first semester of the senior year, as provided in the bill;

**OR**

- A minimum score of 1400 on the SAT or an equivalent ACT score; and a cumulative 4.0 grade point ratio at the end of the junior year.

The bill also provides that a student who met the initial eligibility requirements for the Palmetto Fellows Scholarship as a high school senior and has met the continuing eligibility requirements shall receive the award. Also, a student who received this scholarship as a high school senior, but who declined the award may reapply for the annual scholarship if he meets the initial and continuing academic eligibility requirements, if he transfers to a qualifying in-state institution. The bill requires that the number of semesters or years a student attends an out-of-state institution must be deducted from the number of semesters or academic years a student is eligible for the scholarship.

### **S.618 STATE RETIREMENT SYSTEM PRESERVATION AND INVESTMENT REFORM ACT Sen. Alexander**

This comprehensive bill makes significant revisions to the South Carolina Retirement System (the System), including the Teacher and Employee Retention Incentive (TERI) program. These changes include, but are not limited to:

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- A provision that retired members of the system must pay the employee contribution to the system if employed by an employer participating in the system, and a TERI program participant does not accrue additional service credit in the system;
- A provision that TERI participants may not receive payment for unused annual leave until they terminate from state employment and end their participation in the TERI program;
- A provision that after June 30, 2005, a payment for unused annual leave is not included in calculating a member's deferred TERI program benefit during the program period;
- A provision that upon termination of employment of members who began participation in the TERI program after June 30, 2005, the System shall recalculate the average final compensation of the member to determine the benefit the member receives after participation in the program. The average final compensation calculated at the commencement of the TERI program must be increased by an amount up to and including 45 days termination pay for unused annual leave received by the member at termination of employment, divided by three.
- The member's benefit after participation in the TERI program must be calculated using the recalculated average final compensation and the member's service credit, including sick leave, as of the date the member began participation in the program, plus any cost of living increases declared during the TERI program period with respect to the amount of the member's deferred program benefit;
- For members who began participation in the TERI program before July 1, 2005, and after June 30, 2005, the bill includes separate provisions regarding determination of the survivor benefit;
- A provision requiring that a TERI participant must terminate employment no later than the fifth annual anniversary of the date the member commenced participation in the program;
- A provision that TERI participants who began participation in the program after June 30, 2005, are ineligible to be employed by a covered employer except for certain provisions for teachers returning to employment;
- A provision removing the earnings cap for retired members who are returning to employment covered by the System;
- Definitions for "SCRS28 Participant," which is a member of the System who began membership before January 1, 2006, and had contributions on account with the System as of December 31, 2005; and "SCRS30 Participant," which is a member of the System who began membership after December 31, 2005, and rates of retirement deductions from compensation for each of these two categories;
- Provisions creating and providing for two classes of service credit that may be earned by SCRS30 participants;
- Provisions for early retirement election and for calculation of benefits for SCRS28 and SCRS30 participants who have met certain criteria;
- Provisions revising the investment of funds of the System, including establishing and providing for the six-member Retirement System Investment Commission (RSIC) to serve as the trustee of the retirement system and to invest the funds of the retirement system;

**H.3911 PENALTIES FOR LATE PAYMENT OF PROPERTY TAXES Rep.**

**Parks**

This bill provides that penalties imposed for late payment of property taxes also apply to a special tax or uniform service charge which is included on the property tax bill.

**H.3919 ASSESSMENT OF PROPERTY TAXES Rep. Viers**

Currently, a motor home on which the interest portion of indebtedness is deductible under the Internal Revenue Code as an interest expense on a qualified primary or second residence is also a primary or second residence for purposes of South Carolina *ad valorem* property taxes and is considered real property for property tax purposes. This bill provides that a boat may also be included in this classification if it meets the same requirements.

The bill also provides an exemption for a sufficient amount of the fair market value of a watercraft and of the combined value of a watercraft and its motor, if taxed separately, to limit to one thousand, five hundred dollars the property tax due on the watercraft or both the watercraft and the motor, for one property-tax year.

**H.3926 "SOUTH CAROLINA EDUCATION TAX DEDUCTION ACT" Rep. Taylor**

This bill enacts the "South Carolina Education Tax Deduction Act," authorizing and providing for a tax deduction for each qualifying student enrolled at an independent school or taught at home. The bill requires and provides for the Board of Economic Advisors to estimate annually the maximum deduction that may be allowed based on an individual income tax revenue loss of three million, one hundred thousand dollars. The bill provides that the maximum deduction must not exceed the lesser of the certified estimate or three thousand dollars.

**H.3930 PROPERTY REASSESSMENT/TAXATION Rep. Bowers**

This bill authorizes and provides for an exemption from property tax of an amount of fair market value of real property located in the county sufficient to eliminate any increase in fair market value attributable to a countywide appraisal and equalization program.

**H.3931 DELAY OF IMPLEMENTING REASSESSED PROPERTY VALUES Rep. Bowers**

This joint resolution provides that a county which conducted a countywide property tax equalization and reassessment program after 2000 which has not yet been implemented, may by ordinance postpone the implementation for one additional property tax year.

**H.3932 REVISIONS TO STATE GENERAL OBLIGATION ECONOMIC DEVELOPMENT BOND ACT Rep. Harrell**

This bill revises certain definitions included in the State General Obligation Economic Development Bond Act and provides further for the manner in which these bonds shall be issued. The bill addresses the State Supreme Court's decision which held that certain provisions of Act 187 of 2004 (Life Sciences Act, et al) were unconstitutional because of a multiplicity of subjects in the same enactment. The bill includes a determination by the General Assembly to reenact certain of these provisions with amendment in particular cases in a separate act, including initiatives which have the

commonality of being funded from the same funding source relating to the issuance of general obligation bonds for stated public purposes authorized by the South Carolina Constitution. The bill includes a finding by the General Assembly that the funding of these projects with these bonds serves a valid public purpose and benefits South Carolina with subsequent economic and employment benefits.

**H.3937 SOUTH CAROLINA RURAL INFRASTRUCTURE BANK  
TRUST FUND Rep Ott**

This bill creates, and provides for operation of, the South Carolina Rural Infrastructure Bank Trust Fund (the Trust Fund) from which special purpose districts, public service districts, commissions of public works, and private nonprofit water and sewer providers may apply for funding for water and/or sewer construction. The bill provides that during a fiscal year, any revenues in the State Rural Infrastructure Fund over \$12 million must be deposited into the Trust Fund and any revenues over \$17 million revert back to the State Rural Infrastructure Fund.

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